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DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[Docket No. FWS–R8–ES–2011–0085]

[4500030114]

RIN 1018–AX39

**Endangered and Threatened Wildlife and Plants; Designation of Critical Habitat
for the Tidewater Goby**

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; reopening of comment period.

SUMMARY: We, the U.S. Fish and Wildlife Service, announce the reopening of the public comment period on the October 19, 2011, proposed revised designation of critical habitat for the tidewater goby (*Eucyclogobius newberryi*) under the Endangered Species Act of 1973, as amended (Act). We also announce the availability of a draft economic analysis (DEA) of the proposed revised designation of critical habitat for tidewater goby and an amended required determinations section of the proposal. We are reopening the comment period to allow all interested parties an opportunity to comment simultaneously on the proposed revised designation, the associated DEA, and the amended required determinations section. Comments previously submitted need not be resubmitted, as they will be fully considered in preparation of the final rule.

DATES: The comment period for the proposed rule published October 19, 2011 (76 FR 64996) is reopened. We will consider comments received on or before [INSERT DATE 30 DAYS AFTER DATE OF FEDERAL REGISTER PUBLICATION]. Comments submitted electronically using the Federal eRulemaking Portal (see **ADDRESSES** section, below) must be received by 11:59 p.m. Eastern Time on the closing date.

ADDRESSES: *Document availability:* You may obtain copies of the proposed rule and the draft economic analysis on the Internet at <http://www.regulations.gov> at Docket Number FWS–R8–ES–2011–0085, or by mail from the Ventura Fish and Wildlife Office (see **FOR FURTHER INFORMATION CONTACT**).

Comment submission: You may submit written comments by one of the following methods:

(1) *Electronically:* Go to the Federal eRulemaking Portal:

<http://www.regulations.gov>. In the Search box, enter FWS–R8–ES–2010–0085, which is the docket number for this rulemaking. Then, on the left side of the screen, under the Document Type heading, click on the Proposed Rules link to locate this document and submit a comment.

(2) *By hard copy:* Submit by U.S. mail or hand-delivery to: Public Comments Processing, Attn: FWS–R8–ES–2011–0085; Division of Policy and Directives Management; U.S. Fish and Wildlife Service; 4401 N. Fairfax Drive, MS 2042–PDM; Arlington, VA 22203.

We request that you send comments only by the methods described above. We will post all comments on <http://www.regulations.gov>. This generally means that we will post any personal information you provide us (see the **Public Comments** section below for more information).

FOR FURTHER INFORMATION CONTACT: Diane K. Noda, Field Supervisor, Ventura Fish and Wildlife Office, 2493 Portola Road, Suite B, Ventura, CA 93003; by telephone 805–644–1766; or by facsimile 805–644–3958. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay

Service (FIRS) at 800–877–8339.

SUPPLEMENTARY INFORMATION:

Public Comments

We will accept written comments and information during this reopened comment period on our proposed revised designation of critical habitat for the tidewater goby that was published in the **Federal Register** on October 19, 2011 (76 FR 64996), our DEA of the proposed revised designation, and the amended required determinations provided in this document. We will consider information and recommendations from all interested parties. We are particularly interested in comments concerning:

(1) The reasons why we should or should not designate habitat as “critical habitat” under section 4 of the Act (16 U.S.C. 1531 *et seq.*), including whether there are threats to the species from human activity, the degree of which can be expected to increase due to the designation, and whether that increase in threat outweighs the benefit of designation such that the designation of critical habitat is not prudent.

(2) Specific information on:

(a) The distribution of the tidewater goby;

(b) The amount and distribution of tidewater goby habitat;

(c) What areas within the geographical area occupied by the species at the time of listing that contain physical or biological features essential to the conservation of the species we should include in the designation and why; and

(d) What areas outside the geographical area occupied at the time of listing are essential for the conservation of the species and why.

(3) Land-use designations and current or planned activities in the subject areas and their possible effects on proposed revised critical habitat for tidewater goby.

(4) Any foreseeable economic, national security, or other relevant impacts that may result from designating any area that may be included in the final designation. We are particularly interested in any impacts on small entities, and the benefits of including or excluding areas from the proposed designation that are subject to these impacts.

(5) Whether our approach to designating critical habitat could be improved or modified in any way to provide for greater public participation and understanding, or to assist us in accommodating public concerns and comments.

(6) Information on the extent to which the description of economic impacts in the DEA is complete and accurate.

(7) The likelihood of adverse social reactions to the designation of critical

habitat, as discussed in the DEA, and how the consequences of such reactions, if likely to occur, would relate to the conservation and regulatory benefits of the proposed critical habitat designation.

If you submitted comments or information on the proposed revised rule (76 FR 64996) during the initial comment period from October 19, 2011, to December 19, 2011, please do not resubmit them. We will incorporate them into the public record as part of this comment period, and we will fully consider them in the preparation of our final determination. Our final determination concerning revised critical habitat will take into consideration all written comments and any additional information we receive during both comment periods. On the basis of public comments, we may, during the development of our final determination, find that areas proposed do not meet the definition of critical habitat, are appropriate for exclusion under section 4(b)(2) of the Act, or are not appropriate for exclusion.

You may submit your comments and materials concerning the proposed rule or DEA by one of the methods listed in the **ADDRESSES** section. We request that you send comments **only** by the methods described in the **ADDRESSES** section.

If you submit a comment via <http://www.regulations.gov>, your entire comment—including any personal identifying information—will be posted on the website. We will post all hardcopy comments on <http://www.regulations.gov> as well. If you submit a

hardcopy comment that includes personal identifying information, you may request at the top of your document that we withhold this information from public review. However, we cannot guarantee that we will be able to do so.

Comments and materials we receive, as well as supporting documentation we used in preparing the proposed rule and DEA, will be available for public inspection on <http://www.regulations.gov> at Docket No. FWS–R8–ES–2011–0085, or by appointment, during normal business hours, at the U.S. Fish and Wildlife Service, Ventura Fish and Wildlife Office (see **FOR FURTHER INFORMATION CONTACT**). You may obtain copies of the proposed revised rule and the DEA on the Internet at <http://www.regulations.gov> at Docket Number FWS–R8–ES–2011–0085, or by mail from the Ventura Fish and Wildlife Office (see **FOR FURTHER INFORMATION CONTACT**).

Background

It is our intent to discuss only those topics directly relevant to the designation of critical habitat for tidewater goby in this document. For more information on previous Federal actions concerning the tidewater goby, refer to the proposed revised designation of critical habitat published in the **Federal Register** on October 19, 2011 (76 FR 64996). For more information on the tidewater goby or its habitat, refer to the final listing rule published in the **Federal Register** on February 4, 1994 (59 FR 5494); the first and

second rules proposing critical habitat published in the **Federal Register** on August 3, 1999 (64 FR 42250) and November 28, 2006 (71 FR 68914), respectively; and the subsequent final critical habitat designations published in the **Federal Register** on November 20, 2000 (65 FR 69693) and January 31, 2008 (73 FR 5920), which are available at <http://www.fws.gov/ventura> or from the Ventura Fish and Wildlife Office (see **FOR FURTHER INFORMATION CONTACT**). Additionally, more species information can be found in the Recovery Plan for the Tidewater Goby (Recovery Plan) (Service 2005), and in the Tidewater Goby 5-year review (Service 2007), which are available at <http://www.fws.gov/endangered>.

Previous Federal Actions

On April 15, 2009, Natural Resources Defense Council (NRDC) filed a lawsuit in the U.S. District Court for the Northern District of California challenging a portion of the January 31, 2008, final rule that designated 44 critical habitat units in Del Norte, Humboldt, Mendocino, Sonoma, Marin, San Mateo, Santa Cruz, Monterey, San Luis Obispo, Santa Barbara, Ventura, and Los Angeles Counties, California (73 FR 5920, January 31, 2008). In a consent decree dated December 11, 2009, the U.S. District Court: (1) Stated that the 44 critical habitat units should remain in effect, (2) stated that the final rule designating critical habitat was remanded in its entirety for reconsideration, and (3) directed the Service to promulgate a revised critical habitat rule that considers the entire geographic range of the tidewater goby and any currently unoccupied tidewater goby

habitat. The consent decree requires that the Service submit a final revised rule to the **Federal Register** no later than November 27, 2012.

Critical Habitat

Section 3 of the Act defines critical habitat as the specific areas within the geographical area occupied by a species, at the time it is listed in accordance with the Act, on which are found those physical or biological features essential to the conservation of the species and that may require special management considerations or protection, and specific areas outside the geographical area occupied by a species at the time it is listed, upon a determination that such areas are essential for the conservation of the species. If the proposed rule is made final, section 7 of the Act will prohibit destruction or adverse modification (collectively referred to as “adverse modification”) of the designated critical habitat by any activity funded, authorized, or carried out by any Federal agency. Federal agencies proposing actions that may affect critical habitat must consult with us on the effects of their proposed actions, under section 7(a)(2) of the Act.

Consideration of Impacts under Section 4(b)(2) of the Act

Section 4(b)(2) of the Act requires that we designate or revise critical habitat based upon the best scientific data available, after taking into consideration the economic impact, impact on national security, or any other relevant impact of specifying any

particular area as critical habitat. We may exclude an area from critical habitat if we determine that the benefits of excluding the area outweigh the benefits of including the area as critical habitat, provided such exclusion will not result in the extinction of the species.

When considering the benefits of inclusion for an area, we consider the additional regulatory benefits that area would receive from the protection from adverse modification as a result of actions with a Federal nexus (activities conducted, funded, permitted, or authorized by Federal agencies), the educational benefits of mapping areas containing essential features that aid in the recovery of the listed species, and any benefits that may result from designation due to State or Federal laws that may apply to critical habitat. In the case of tidewater goby, the benefits of critical habitat include public awareness of the presence of tidewater goby and the importance of habitat protection, and, where a Federal nexus exists, increased habitat protection for tidewater goby due to protection from adverse modification of critical habitat. In practice, situations with a Federal nexus exist primarily on Federal lands or for projects undertaken by Federal agencies.

When considering the benefits of exclusion, we consider, among other things, whether exclusion of a specific area is likely to result in conservation; the continuation, strengthening, or encouragement of partnerships; or implementation of a management plan.

We are not currently considering any areas for exclusion from critical habitat. However, the final decision on whether to exclude any areas will be based on the best scientific data available at the time of the final designation, including information obtained during the comment period and information about the economic impact of designation. Accordingly, we have prepared a draft economic analysis concerning the proposed critical habitat designation (DEA), which is available for review and comment (see **ADDRESSES**).

Draft Economic Analysis

The purpose of the DEA is to identify and analyze the potential economic impacts associated with the proposed critical habitat designation for the tidewater goby. The DEA separates conservation measures into two distinct categories according to “without critical habitat” and “with critical habitat” scenarios. The “without critical habitat” scenario represents the baseline for the analysis, considering protections otherwise afforded to the tidewater goby (e.g., under the Federal listing and other Federal, State, and local regulations). The “with critical habitat” scenario describes the incremental impacts specifically due to designation of critical habitat for the species. In other words, these incremental conservation measures and associated economic impacts would not occur but for the designation. Conservation measures implemented under the baseline (without critical habitat) scenario are described qualitatively within the DEA, but economic impacts associated with these measures are not quantified. Economic impacts

are only quantified for conservation measures implemented specifically due to the designation of critical habitat (i.e., incremental impacts). For a further description of the methodology of the analysis, see Chapter 2, “Framework for the Analysis,” of the DEA (Industrial Economics Incorporated (IEc) 2012).

The DEA provides estimated costs of the foreseeable potential economic impacts of the proposed critical habitat designation for the tidewater goby over the next 20 years, which was determined to be the appropriate period for analysis because limited planning information is available for most activities to forecast activity levels for projects beyond a 20-year timeframe. It identifies potential incremental costs as a result of the proposed revised critical habitat designation; these are those costs attributed to critical habitat over and above those baseline costs attributed to listing. The DEA quantifies economic impacts of tidewater goby conservation efforts associated with the following categories of activity: (1) Water management; (2) cattle grazing; (3) transportation (roads, highways, bridges); (4) utilities (oil and gas pipelines); (5) residential, commercial, and industrial development; and (6) natural resource management.

Baseline protections for the tidewater goby address a broad range of habitat threats within a significant portion of the proposed critical habitat area. A key consideration in the incremental analysis is that, where tidewater goby critical habitat overlaps with steelhead (*Oncorhynchus mykiss*) critical habitat, steelhead conservation measures would be sufficiently protective for tidewater goby critical habitat as well. As a

result, few incremental project modification costs are anticipated in these areas. Across the designation, incremental costs primarily include costs of administrative efforts associated with new and reinitiated consultations to consider adverse modification of critical habitat for tidewater goby. In addition, some minor incremental project modification costs are forecast to result from critical habitat. This result is attributed to the following key findings: (1) Baseline protections exist for tidewater goby; (2) steelhead critical habitat overlaps with a large portion of the unoccupied units; and (3) minimal economic activity occurs on private lands in the study area.

In total, the incremental impacts to all economic activities are estimated to be \$558,000 over the 20-year timeframe, or \$49,300 on an annualized basis (assuming a 7 percent discount rate). Approximately 98 percent of these incremental costs result from administrative costs of considering adverse modification in section 7 consultations.

Incremental conservation efforts are estimated to be \$11,500 over the 20-year timeframe or \$1,090 on an annualized basis (both assuming a 7 percent discount rate). These include the costs of adding the tidewater goby to the environmental impact reports (EIR) required for projects that are being proposed in critical habitat unit MAR-5 Bolinas Lagoon and SLO-12 Oso Flaco Lake, as well as additional surveying for tidewater goby in Oso Flaco Lake.

As we stated earlier, we are soliciting data and comments from the public on the DEA, as well as all aspects of the proposed rule and our amended required determinations. We may revise the proposed rule to incorporate or address information we receive during the public comment period. In particular, we may exclude an area from critical habitat if we determine that the benefits of excluding the area outweigh the benefits of including the area, provided the exclusion will not result in the extinction of this species.

Changes to Proposed Revised Critical Habitat

In this document, we are making a revision to the proposed revised critical habitat as identified and described in the proposed rule that we published in the **Federal Register** on October 19, 2011 (76 FR 64996). In the proposed rule we stated that, “We also are proposing to designate specific areas outside the geographical area occupied by the species at the time of listing that were historically occupied, but are presently unoccupied, because such areas are essential for the conservation of the species” (76 FR 65004). However, we did not intend to limit the proposal to only specific areas outside the geographical area occupied by the species at the time of listing that were historically occupied. Our intent was to consider all areas that are essential for the conservation of the species and not only those that were known to be historically occupied, and we were in error when we included “that were historically occupied, but are presently unoccupied” in the proposed revised rule. In the proposed revised rule, we proposed to designate 6

units that are outside the geographical area occupied by the species at the time of listing where tidewater gobies have not been detected. These units are: SM-2 Pomponio Creek, MAR-5 Bolinas Lagoon, SLO-1 Arroyo de la Cruz, SLO-12 Oso Flaco Lake, LA-1 Arroyo Sequit, and LA-2 Zuma Canyon. These units are essential for the conservation of the tidewater goby because translocation to new locations within developing metapopulations is anticipated to enhance or accelerate the rangewide recovery effort as described in the recovery plan (Service 2005). Moreover, the recovery strategy in the recovery plan states that as subpopulations of tidewater gobies become isolated, recolonization rates decrease, local extirpations become permanent, and entire metapopulations can move incrementally toward extinction. Thus, these units are essential for the conservation of the species because they could be used to minimize the chance of local extirpations resulting in extinction of the broader metapopulations and resultant loss of their unique genetic traits either by introducing tidewater goby in these units or by the natural colonization of these units.

Required Determinations – Amended

In our October 19, 2011, proposed revised rule (76 FR 64996), we indicated that we would defer our determination of compliance with several statutes and executive orders until the information concerning potential economic impacts of the designation and potential effects on landowners and stakeholders became available in the DEA. We have now made use of the DEA data to make these determinations. In this document, we

affirm the information in our proposed revised rule concerning Executive Order (E.O.) 12866 (Regulatory Planning and Review), E.O. 12630 (Takings), E.O. 13132 (Federalism), E.O. 12988 (Civil Justice Reform), E.O. 13211 (Energy, Supply, Distribution, and Use), the Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq.*), the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*), and the President’s memorandum of April 29, 1994, “Government-to-Government Relations with Native American Tribal Governments” (59 FR 22951). However, based on the DEA data, we are amending our required determination concerning the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

Regulatory Flexibility Act (5 U.S.C. 601 et seq.)

Under the Regulatory Flexibility Act (RFA; 5 U.S.C. 601 *et seq.*), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA; 5 U.S.C. 801 *et seq.*), whenever an agency is required to publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effects of the rule on small entities (i.e., small businesses, small organizations, and small government jurisdictions). However, no regulatory flexibility analysis is required if the head of the agency certifies the rule will not have a significant economic impact on a substantial number of small entities. The SBREFA amended the RFA to require Federal agencies to provide a certification statement of the factual basis for certifying that the rule will not have a significant

economic impact on a substantial number of small entities. Based on our DEA of the proposed designation, we provide our analysis for determining whether the proposed rule would result in a significant economic impact on a substantial number of small entities. Based on comments we receive, we may revise this determination as part of our final rulemaking.

According to the Small Business Administration, small entities include small organizations such as independent nonprofit organizations; small governmental jurisdictions, including school boards and city and town governments that serve fewer than 50,000 residents; and small businesses (13 CFR 121.201). Small businesses include manufacturing and mining concerns with fewer than 500 employees, wholesale trade entities with fewer than 100 employees, retail and service businesses with less than \$5 million in annual sales, general and heavy construction businesses with less than \$27.5 million in annual business, special trade contractors doing less than \$11.5 million in annual business, and agricultural businesses with annual sales less than \$750,000. To determine if potential economic impacts to these small entities are significant, we considered the types of activities that might trigger regulatory impacts under this designation as well as types of project modifications that may result. In general, the term “significant economic impact” is meant to apply to a typical small business firm’s business operations.

To determine if the proposed designation of critical habitat for the tidewater goby

would affect a substantial number of small entities, we considered the number of small entities affected within particular types of economic activities, such as: (1) Water management; (2) cattle grazing; (3) transportation (roads, highways, bridges); (4) utilities (oil and gas pipelines); (5) residential, commercial, and industrial development; and (6) natural resource management. In order to determine whether it is appropriate for us to certify that this proposed rule would not have a significant economic impact on a substantial number of small entities, we considered each industry or category individually. In estimating the numbers of small entities potentially affected, we also considered whether their activities have any Federal involvement. Critical habitat designation will not affect activities that do not have any Federal involvement; designation of critical habitat only affects activities conducted, funded, permitted, or authorized by Federal agencies. In areas where the tidewater goby is present, Federal agencies already are required to consult with us under section 7 of the Act on activities they fund, permit, or implement that may affect the species. If we finalize the proposed critical habitat designation, consultations to avoid the adverse modification of critical habitat would be incorporated into the existing consultation process.

In the DEA, we evaluated the potential economic effects on small entities resulting from implementation of conservation actions related to the proposed designation of critical habitat for the tidewater goby. The analysis is based on estimated impacts associated with the proposed rulemaking as described in Chapters 4 and 5, and Appendix A, of the DEA, and evaluates the potential for economic impacts related to activity

categories including development, natural resource management, transportation, utilities, water management, and recreation.

As described in Chapters 4 and 5 of the DEA, estimated incremental impacts consist primarily of administrative costs and time delays associated with section 7 consultation. The Service and the action agency are the only entities with direct compliance costs associated with this proposed critical habitat designation, although small entities may participate in section 7 consultation as a third party. It is therefore possible that the small entities may spend additional time considering critical habitat during section 7 consultation for the tidewater goby. The DEA indicates that the incremental impacts potentially incurred by small entities are limited to development, natural resource management, transportation, utilities, and water management activities.

Chapter 5 of the DEA discusses the potential for proposed revised critical habitat to affect development through additional costs of section 7 consultation. These costs are borne by developers and existing landowners, depending on whether developers are able to pass all or a portion of their costs back to landowners in the form of lower prices paid for undeveloped land. Of the total number of entities engaged in land subdivision and residential, commercial, industrial and institutional construction, nearly 99 percent are small entities.

Whether individual developers are affected depends on the specific characteristics of a particular land parcel as well as the availability of land within the affected region. If land is not scarce, the price of a specific parcel will likely incorporate any regulatory restrictions on that parcel. Therefore, any costs associated with conservation efforts for tidewater goby will likely be reflected in the price paid for the parcel. In this case, the costs of conservation efforts are ultimately borne by the current landowner in the form of reduced land values. Many of these landowners may be individuals or families that are not legally considered to be businesses.

If, however, land in the affected region is scarce, or the characteristics of the specific parcel are unique, the price of a parcel may not incorporate regulatory restrictions associated with that parcel. In this case, the project developer may be required to incur the additional costs associated with the section 7 consultation process. To understand the potential impacts on small entities, we conservatively assume that all of the private owners of developable lands affected by proposed revised critical habitat designation are developers.

In Chapter 5 of the DEA, we estimate that a total of 20 formal, informal, and technical assistance consultations, plus one re-initiation, may require additional effort to consider adverse modification of revised critical habitat. Assuming that each consultation is undertaken by a separate entity, we estimate that 21 developers may be affected by the designation. For purposes of this analysis, and because nearly 99 percent

of developers in the study area are small, we assume that all 21 are small entities. These developers represent less than 0.1 percent of small developers in the study area.

Excluding costs borne by Federal agencies, costs per consultation range from \$260 for technical assistance to \$1,800 for re-initiation of a formal consultation. Because we are unable to identify the specific entities affected, the impact relative to those entities' annual revenues or profits is unknown. However, assuming the average small entity has annual revenues of approximately \$5.1 million, this maximum annualized impact of \$1,800 represents less than 0.1 percent of annual revenues.

The consultation history for natural resource management projects suggests that these projects are generally undertaken by Federal and State agencies, or County departments. The DEA estimates incremental administrative costs for section 7 consultation on natural resource management in every County except Orange County. Only one of these entities, Del Norte County, meets the threshold for small governmental jurisdiction. Del Norte County is anticipated to incur administrative costs associated with addressing adverse modification in approximately three consultations, including one re-initiation. Even if all consultations occur in the same year, total impacts to Del Norte County will be less than 1 percent of the County's annual revenue.

The consultation history for tidewater goby includes several consultations regarding utilities and oil and gas development. In Chapter 5 of the DEA, we estimate

that 24 consultations involving utility activities will occur during the 20-year period. Based on the overall percentage of all small entities in the study area (56 percent), we estimate that 14 of the 24 total entities that will be affected over the 20-year period are small entities. Excluding costs to Federal agencies, the cost per entity of addressing adverse modification in a section 7 consultation ranges from \$260 for technical assistance to \$880 for a formal consultation (no re-initiations are predicted for utility activities). Because we are unable to identify the specific entities affected, the impact relative to those entities' annual revenues or profits is unknown. However, assuming the average small entity in this industry has annual revenues of approximately \$9.3 million, this maximum annualized impact of \$880 represents less than 0.01 percent of annual revenues.

Chapter 5 of the DEA also discusses the potential for water management activities to be affected by the designation. Over the 20-year period, we estimate that 125 consultations involving water management activities, including re-initiations, will occur. Based on the overall percentage of all small entities in the study area (83 percent), we estimate that 104 of the 125 total entities that will be affected over the 20-year period are small entities. Excluding costs to Federal agencies, the cost per entity of addressing adverse modification in a section 7 consultation ranges from \$260 for technical assistance to \$1,800 for re-initiation of a formal consultation. Because we are unable to identify the specific entities affected, the impact relative to those entities' annual revenues or profits is unknown. However, assuming the average small entity in this industry has annual

revenues of approximately \$5.0 million, this maximum annualized impact of \$1,800 represents less than 0.1 percent of annual revenues.

The DEA also concludes that none of the government entities with which we might consult on tidewater goby for transportation or recreation meet the definitions of small as defined by the Small Business Act (SBE) (IEC 2012, p. A-6); therefore, impacts to small government entities due to transportation and recreation are not anticipated. A review of the consultation history for tidewater goby suggests future section 7 consultations on livestock grazing (for example, ranching operations) are unlikely, and as a result are not anticipated to be affected by the proposed rule (IEC 2012, p. 5-13). Please refer to the DEA of the proposed critical habitat designation for a more detailed discussion of potential economic impacts.

In summary, we have considered whether the proposed designation would result in a significant economic impact on a substantial number of small entities. Information for this analysis was gathered from the Small Business Administration, stakeholders, and our files. We have identified 161 small entities that may be impacted by the proposed critical habitat designation. For the above reasons and based on currently available information, we certify that, if promulgated, the proposed critical habitat designation would not have a significant economic impact on a substantial number of small business entities. Therefore, an initial regulatory flexibility analysis is not required.

Authors

The primary authors of this notice are the staff members of the Ventura Fish and Wildlife Office, Pacific Southwest Region, U.S. Fish and Wildlife Service.

Authority

The authority for this action is the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Date: July 12, 2012

Michael Bean

Acting Assistant Secretary for Fish and Wildlife and Parks

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